

## Minutes of the July 22, 2011 Regular Council Meeting

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Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Serio, Carmean, Bunting, Smallwood, Langan, Tingle and Weistling  
Absent: None

### President's Report

- Mayor Serio reported that the Bethany Beach Volunteer Fire Company Ambulance Service held its quarterly meeting on July 14, 2011 and Mrs. Serio has been selected Chairperson for the organization. The service's proposed budget was accepted with no increase in operating costs. Members discussed possible grant opportunities and reviewed a report of all activity up to June 30, 2011. The report included total number of calls and other valuable information that will allow members to gauge the range of service being provided.
- Mayor Serio and Council Member Carmean attended a recent meeting of the Center for the Inland Bays. Topics for discussion included a review of projects past, current and future; what activities/actions that towns might need/utilize; the possibility of a demonstration rain garden in the Fenwick Island Cannon Street Park. A member of CIB will make a presentation to the Fenwick Island Town Council in either August or September. The Center has provided the Town with its latest literature, including a new map of the inland bays, that is available in the vestibule of Town Hall.

### Topics for Discussion and Possible Action

- 1) Banziger Annual Block Party – Council Member Smallwood

Council Member Smallwood advised that the Banziger family requests permission to hold its annual block party on August 6, 2011 from 6-10:30 PM. Mr. Banziger has completed a Special Permit Application to allow music and requests Council's approval. The event is free and open to the public.

Motion to approve Special Event Permit for the Banziger Annual Block Party – Council Member Carmean  
Second – Council Member Langan  
DISCUSSION - None  
Vote: (7-0) Motion passed

### Approval of Minutes:

Motion to Approve the Minutes of June 24 2011 Meeting - Council Member Carmean  
Second: Council Member Smallwood

DISCUSSION – Council Member Carmean requested the following changes:

- The Yacht Club requests that Council formally support their effort. In support of ~~their~~ **this** effort, the ~~Yacht Club~~ **Fenwick Island Environmental Committee** supplied Council with a drawing of the proposed ...
- Environmental Committee – Council Member Carmean ~~apologized for the~~ **explained there was** a last minute cancellation of the solar workshop **due to the presenter's illness.**

Vote: (7-0) to accept the minutes with the above noted changes  
Minutes approved.

### Treasurer's Report:

Council Member Bunting advised that the Town is still under budget and is confident that it will finish the year that way.

Motion to accept the Treasurer's report – Council Member Carmean  
Second – Council Member Langan

DISCUSSION - None

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Vote: (7-0)

Treasurer's Report accepted.

Council Member Bunting requested that he be excused from attendance at the next regular Council meeting on August 26, 2011.

Motion to approve his request – Council Member Carmean

Second – Council Member Langan

DISCUSSION – None

Vote: (7-0)

Request approved

## **Town Manager Report:**

- Mr. Abbott reported that he has visited other beach communities to view the different configurations for Mobi Mats. The recent rain has caused some “ditching” in the Town’s mats and Public Works has filled the spaces. He will continue to review conditions and to accept comments from the public.
- Regarding the reeds on the beach, the State has cleaned the beach and the Town has sought a general estimate from the State’s contractor for regular clean up. The Public Works Department will work up a cost estimate for cleaning that will be offered for inclusion in next year’s Town budget.
- Town Manager Abbott and Building Official Schuchman attended an All Hazards Mitigation meeting recently. Mr. Abbott has been in contact with DNREC regarding possible water pollution control assistance and has contacted Kercher Engineering for a proposal to address drainage issues on the bayside.

## **Department Reports:**

- Building Official – Report included in meeting packet. Building Official Patricia Schuchman advised that tax assessments are complete; thirty five (35) property owners have received letters from her regarding an increase in their assessed value and tax liability. The estimated \$300,000 increase in assessed value will result in an estimated increase of \$6000 in tax revenue.
- Public Works - Report included in meeting packet. Town Manager Abbott reported that the staff has adjusted its work schedule due to the recent heat wave.
- Beach Patrol – Report included in meeting packet. Captain Tim Ferry advised that, since the publication of the attached report, there has been an increase in rescues due to surf and current conditions.
  - Council Member Smallwood requested information on the National Competition; Captain Ferry advised that Fenwick Island will send five (5) members to the competition in Cape May, NJ from August 3-6, 2011.
  - Mr. Smallwood asked if there are plans for the annual lifeguard dinner; Captain Ferry advised that he will work with Town Manager Abbott on details and hopes to have the dinner on either August 9 or August 10.
- Police Department - Report included in meeting packet. Chief Boyden reported that he had nothing to add.

## **Committee Reports:**

- Beach Committee –Becka McWilliams reported that the Annual Bonfire raised \$4300 to support the Fenwick Island Beach Patrol. Breakdown of proceeds from activities: sno-cones (\$500), donations (\$150), 50/50 (\$510), sale of t-shirts donated by Craig Pfeifer (\$2200) and silent auction (>\$1000). Mrs. McWilliams thanked the Town for its support. Council remarked that this was an extremely well-attended event that was orderly and fun. Council Member Carmean especially liked the Silent Auction and Mrs. McWilliams hope to increase the offerings next year.
- Environmental Committee – Council Member Carmean reported that the MERR (Marine Education, Research and Rehabilitation) Institute presentation on Saturday, July 9, 2011 was excellent and well-attended. She encouraged everyone to take and read the CIB brochures that are available.
- Public Safety Building – Council Member Langan advised that the Town Solicitor is reviewing the proposed construction contract and performance bond. A meeting of the Public Safety Building Committee is scheduled for August 5, 2011 to approve the contract so that construction can begin after Labor Day.

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## **Planning Commission: No report**

### **Charter & Ordinance**

- Proposed Second Reading Chapter 160 Zoning (Auctions) – Council Member Weistling  
Council Member Weistling asked Council to consider a change to Chapter 160 Zoning to prohibit auctioning livestock or domestic, foreign and/or exotic animals (copy attached to this document).  
Motion to accept Proposed Second Reading – Council Member Weistling  
Second – Council Member Serio

### **DISCUSSION**

Council Member Weistling advised that, as per ordinance, a public hearing has been held and there were no comments regarding the change.

Vote: (7-0) Smallwood – aye; Carmean – aye; Bunting – aye; Serio – aye; Weistling – aye; Tingle – aye; Langan - aye  
Second Reading Chapter 160 Zoning (Auctions) passed.

- Proposed Second Reading Chapter 61 Building and Utility Construction – Council Member Weistling  
Council Member Weistling asked Council to approve a change to Chapter 61 Building and Utility Construction (copy attached to this document).

Motion to accept Proposed First Reading – Council Member Weistling  
Second – Council Member Smallwood

### **DISCUSSION**

Council Member Weistling noted the changes and inclusion of violations and penalties.

Vote: (7-0) Smallwood – aye; Carmean – aye; Bunting – aye; Serio – aye; Weistling – aye; Tingle – aye; Langan - aye  
Second Reading Chapter 61 Building and Utility Construction passed.

### **Old Business**

Mayor Serio advised that the Town has received its contract from Kercher Engineering for street maintenance. The funds have already been allocated in the current budget. Council Member Weistling asked if Kercher has proposed a time frame to inspect the streets. Town Manager Abbott advised that they have not but he will ask for one so that he can forward all pertinent information to the State of Delaware in order to be included in Municipal Street Aid deliberations in January 2012.

Council Member Tingle advised that DNREC has delayed the hearing on the Lighthouse Cove Condominium Marina until September 27, 2011.

### **New Business – No Action to be Taken**

None

### **Public Participation:**

- Gerald Purnell (709 Coastal Hwy) – asked if Council has been able to resolve his issue with Royal Farms Store regarding public urination. Town Manager Abbott advised that the Town received a communication from Royal Farms Store on July 15, 2011 which he forwarded to Council for their consideration. Mr. Purnell called into question a recent meeting between him and Royal Farms at the Town Hall stating that he feels misled by the Town's presence at the meeting. He believes that the Town's presence is an indication of the Town's intention to take action.
  - Mayor Serio advised that the Town will forward (if it has not already done so) the proposal from Royal Farms to the Town Solicitor for a legal opinion. The Town cannot act until it receives a response from the attorney.

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- Mr. Purnell advised that he believes the issue will not be resolved until the Royal Farms Store installs a public restroom. He considers the issue to be a public nuisance that the Town should address. Mayor Serio and Council Members Tingle and Smallwood noted that the Town is trying to work something out but that this is not something that can be done overnight. Mr. Purnell asked that residents be kept advised of any activity relating to the matter.
- Tami Beam (1 E Atlantic St) advised that she sent correspondence to the Town in October 2010 regarding an issue with the Royal Farm Store. She asked if the Town has an ordinance to address her concerns and the process for enforcing public noise problems. Mrs. Beam maintains that the Royal Farms Store gasoline pumping operation is an unmanaged 24-hour business in a residential zone.
  - Council Member Weistling advised that the ordinance has been reviewed and appropriate changes were made to address her concerns. The Fenwick Island Police Department will respond, if they can, anytime a resident calls to complain about perceived illegal activities.
  - Mayor Serio advised that noise problems exist in other areas of Town and that the Royal Farms Store is in a commercial zone.
- Tami Beam (1 E Atlantic St) continued- that the Royal Farms Store has locked the area behind their store causing patrons to use the next closest area to relieve themselves. The area is adjacent to the Beam property. Mrs. Beam advised that she is having the soil tested in the area.
  - Mayor Serio advised that she made it clear to the Royal Farms Store representatives that they need to have a public restroom. The Town's problem is how to require the change legally.
- Mark Beam (1 E Atlantic St) – asked the time span for the Banziger Block Party (6-10:30 PM) and asked if Council would allow the party to continue later. He noted that the noise from the Royal Farms Store goes on all night and that he has not received any support from the Town.
  - Council Member Smallwood advised that the Town would not allow the Banziger party to go on all night and recalled that, at one time, he (Smallwood) owned property behind a local restaurant. He understands the problems that are associated with living in a residential area that abuts a commercial zone but that these types of problems can occur in a residential zone as well.
  - Council Member Carmean advised that she felt that Mr. Beam has made an unfair assessment of the current Council. The residents and Council should talk together to attempt to find a resolution to the problems rather than use confrontation to solve the problem. The Town is not able to make any change on this matter without working with the Town Solicitor.
- Deborah Hammond (907 McWilliams St) – advised that the Town needs to move forward. She believes that the Royal Farms Store response should be referred to the attorney and that the Town should go back to those involved with the legal opinion. All options should be explored in order to satisfactorily resolve the issue. The Fenwick Island Police Department should be called each time a violation is seen to be happening.
  - Mayor Serio reiterated that problems should be reported to the FIPD. Even if the police are unable to respond because of other police activity, it is important to let the officer know what is happening.
- Gerald Purnell ( 709 Coastal Hwy) – urged everyone involved to use common sense in trying to solve the problem.
  - Mayor Serio noted that she vaguely remembers the 24-hour business operation being addressed but it was long ago. Council Member Carmean advised that the Council cannot draft regulations that target one specific business. Council Member Weistling remembers a discussion about limiting the hours of operation at Royal Farms Store so that they would be similar to bar hours.
  - Mayor Serio advised that Council can look at the hours for the gas pumps but that the process will not be fast.
- Tami Beam (1 E Atlantic St) – distributed materials to Council regarding beach replenishment. Mr. Beam stated that he is against it.

## Upcoming Events and Meetings:

- Mayor Serio announced all upcoming meetings and events.

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Motion to adjourn – Council Member Weistling

Second – Council Member Bunting

Vote: (7-0)

Meeting adjourned at 4:33 PM.

Respectfully submitted,

Agnes DiPietrantonio, Town Clerk

For Diane Tingle, Secretary

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*Proposed First Reading – June 24, 2011*

*Proposed Second Reading – July 22, 2011*

Chapter 160 – Zoning

Chapter 160-5 A(61)b (Regulations for Auction Houses):

Add:

- (7) *No auctions of livestock or domestic, foreign and/or exotic animals are permitted.*

Posted: June 28, 2011

*Proposed First Reading – June 24, 2011  
Proposed Second Reading – July 22, 2011*

Chapter 61 – Building and Utility Construction:

Existing –

§ 61-2. Violations and penalties.

A violation of the provisions of this article, or the failure to comply with any of its requirements, shall constitute a misdemeanor, and said violation shall be a continuing one, in the event that it occurs on more than one day. Upon conviction of any single charge, which may encompass and include each day of violation up to and including the date of conviction, a violator shall be subject to a fine of \$100 for each day the violation occurs. The owner or tenant of any building, structure, premises or any part thereof, and any architect, builder, contractor, agent for one of the aforementioned persons or any other person who knowingly commits, furthers, participates in, assists in, or maintains such violation may be separately convicted and be subject to the same penalties provided herein. Nothing in this section shall be construed to prevent or otherwise prohibit the prosecution of the same violation occurring on a date subsequent to the conviction. In addition, the Town Council may institute appropriate proceedings to restrain or enjoin further construction in violation of this article and/or proceedings to abate any violation, and to require the removal of the violation. In this event, the Town Council shall be entitled to collect from the offending party or parties the Council's reasonable legal fees and court costs, as a part of any judgment or award in a civil action brought to restrain or enjoin a violation. The civil remedies are in addition to, and not in place of, the criminal penalty provided herein.

Proposed –

Eliminate "Town Council" and "Council" and replace with "Town".

Move existing § 61-2. Violations and penalties to end of Article I.

*Renumber remaining sections of Chapter.*

Existing –

§ 61-3. Application for permit or clearance.

- D. The estimated cost of the work.

Proposed –

- D. The estimated cost of the work based upon a signed contract.

Existing –

§ 61-5. Revocation of permits.

The Town Council shall have the power to cancel and revoke any such permit for any material departure from the approved application, plans and specifications, and also for any false statement or misrepresentation as to any material fact relating to the erection, construction, alteration, removal, demolition, use or occupancy of such building or structure, or addition thereto.

Proposed –

Eliminate "Town Council" and replace with "Town".



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## REPLACE EXISTING § 61-10 IN ENTIRETY:

§ 61-10. Information required before issuance of permit.

The following data, all or in part, as appropriate, shall be required before the issuance of a building permit.

- (1) A plot survey by a registered engineer or registered land surveyor.
- (2) A survey showing the elevation of the lot and crown of the road or a curb over mean sea level.
- (3) A plot plan showing the size of the building and/or all improvements and lot line setbacks therefrom.
- (4) An elevation drawing showing the height of the building from the crown of the road or curb and the elevation of the first floor level.
- (5) A floor plan print.
- (6) A signed statement of intent (State Highway Department and State Water and Air Resource Commission).
- (7) A county building permit.
- (8) The requirements of Chapter 88, Flood Damage Prevention, must be met.
- (9) A signed waiver concerning flood insurance.
- (10) Where modification of an existing building will increase the building's dimensions in any direction, before and after outline drawings of the effected portions of the building.
- (11) Construction on the east side of Bunting Avenue must have a permit from the Shoreline and Waterway Management Section of the DNREC.

## ADD NEW SECTION AT END OF CHAPTER 61, ARTICLE II -

§ 61-17. Violations and penalties.

A violation of the provisions of this article, or the failure to comply with any of its requirements, shall constitute a misdemeanor, and said violation shall be a continuing one, in the event that it occurs on more than one day. Upon conviction of any single charge, which may encompass and include each day of violation up to and including the date of conviction, a violator shall be subject to a fine of \$100 for each day the violation occurs. The owner or tenant of any building, structure, premises or any part thereof, and any architect, builder, contractor, agent for one of the aforementioned persons or any other person who knowingly commits, furthers, participates in, assists in, or maintains such violation may be separately convicted and be subject to the same penalties provided herein. Nothing in this section shall be construed to prevent or otherwise prohibit the prosecution of the same violation occurring on a date subsequent to the conviction. In addition, the Town may institute appropriate proceedings to restrain or enjoin further construction in violation of this article and/or proceedings to abate any violation, and to require the removal of the violation. In this event, the Town shall be entitled to collect from the offending party or parties the Town's reasonable legal fees and court costs, as a part of any judgment or award in a civil action brought to restrain or enjoin a violation. The civil remedies are in addition to, and not in place of, the criminal penalty provided herein.

## EXISTING:

§ 61-18. Violations and penalties.

B. Any person violating any provision of the article shall, upon conviction therefor, be fined not less than \$100 nor more than \$300 for each and every offense and shall pay the cost of prosecution and the appropriate Victim's Compensation Fund assessment. Each failure to comply with any of the requirements of this article and/or each and every day during which such violation continues shall constitute a separate offense.

## PROPOSED:

§ 61-18. Violations and penalties.

B. Any person violating any provision of the article shall, upon conviction therefor, be fined \$100 for each and every offense and shall pay the cost of prosecution and the appropriate Victim's Compensation Fund assessment. Each failure to comply with any of the requirements of this article and/or each and every day during which such violation continues shall constitute a separate offense.

Posted: June 28, 2011